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**UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 WALKER RIVER PAIUTE TRIBE, )  
 )  
 Plaintiff-Intervenor, )  
 vs. )  
 )  
 WALKER RIVER IRRIGATION DISTRICT, )  
 a corporation, et al., )  
 )  
 Defendants. )  
 )  
 MINERAL COUNTY, )  
 )  
 Proposed-Plaintiff-Intervenor, )  
 vs. )  
 )  
 WALKER RIVER IRRIGATION DISTRICT )  
 a corporation, et al. )  
 )  
 Proposed Defendants. )

IN EQUITY NO. C-125-ECR  
 Subproceedings: C-125-B & C-125-C  
 3:73-CV-00127-ECR- LRL &  
 3:73-CV-00128-ECR- LRL

**SUBMISSION OF PROPOSED  
 ORDER CONCERNING  
 SERVICE ISSUES PERTAINING  
 TO DEFENDANTS WHO HAVE  
 BEEN SERVED**

The United States of America (“United States”) and the Walker River Paiute Tribe  
 (“Tribe”) (Plaintiff and Plaintiff-Intervenor in Subproceeding C-125-B) and Mineral County  
 (Proposed Plaintiff-Intervenor in Subproceeding C-125-C) (collectively “Plaintiff Parties”)

1 submit the attached *Proposed Order Concerning Service Issues Pertaining to Defendants Who*  
2 *Have Been Served*. The proposed order addresses the treatment and finality of service with  
3 respect to defendants who transfer their rights after having been served, defendants who have  
4 been served and acquire additional water rights at issue in the same subproceeding, the treatment  
5 of successors-in-interest following the death of a defendant who has been served, and the  
6 obligations of named defendants in Subproceeding C-125-C who transfer a water right prior to  
7 service. These issues relate to the application of Fed. R. Civ. P. 25 to these subproceedings,  
8 which the parties have discussed previously with the Court, most recently at the Status  
9 Conference on October 19, 2010. *See United States of America's List of Proposed Agenda Items*  
10 *for the Status Conference Scheduled for October 19, 2010* (Oct. 8, 2010) (#1608). The Plaintiff  
11 Parties have filed the proposed order jointly in Subproceedings C-125-B and C-125-C, because  
12 they believe uniform procedures should be applied in both subproceedings to the issues  
13 addressed, even though any filings done pursuant to the proposed order must be made in the  
14 applicable subproceeding, which is reflected in the proposed forms attached to the proposed  
15 order.

16 The proposed order (Attachment 1) addresses the treatment of successor(s)-in-interest  
17 pursuant to Fed. R. Civ. P. 25(c) as a result of an *inter vivos* transfer and includes proposed  
18 forms (Attachment A for use in Subproceeding C-125-B and Attachment B for use in  
19 Subproceeding C-125-C) to be used by current served defendants and their successor(s)-in-  
20 interest to file joint motions for substitution. The Plaintiff Parties believe that the availability of  
21 such a form motion properly places the burden of keeping track of *inter vivos* transfers of water  
22 rights and substituting the successor(s)-in-interest on the served defendant and its successor(s)-  
23 in-interest.

24 The proposed order also addresses the substitution of successor(s)-in-interest following  
25 the death of a served defendant pursuant to Fed. R. Civ. P. 25(a) and identifies procedures to be  
26 followed under these circumstances.

1 Finally, the proposed order addresses the procedures to be followed in Subproceeding C-  
2 125-C when a defendant transfers its interests prior to being served. This portion of the proposed  
3 order and the proposed form (Attachment C) pertain only to Subproceeding C-125-C because the  
4 approved service package in Subproceeding C-125-B already includes a similar form to be used  
5 under these circumstances.

6 Pursuant to the Court's direction at the recent Status Conference and the parties'  
7 *Stipulation and Order Concerning Time for Submission of Proposed Orders and Memoranda*  
8 *Related to Objections Thereto* (Nov. 9, 2010) (#1612), the Defendant parties may file  
9 memoranda related to objections to the proposed order on or before December 17, 2010.

10 The Plaintiff Parties are continuing to consider other means by which Court-approved  
11 forms could be used to address these circumstances. As set forth below, the Plaintiff Parties  
12 have proposed that they confer with the primary Defendants following the filing of defendant  
13 objections on December 17, 2010, before replying to these objections. There may be other  
14 additional procedures and forms that may assist with these issues and we believe that a period for  
15 conferral among the primary parties may help identify other means to address these issues.<sup>1</sup>

16 Neither the Court nor the parties have addressed the issue of how and when the United  
17 States and Tribe should reply to any memoranda related to objections from other parties. The  
18 Plaintiff Parties propose that the parties confer following the filing of any memoranda related to  
19 objections and that the United States and Tribe file any reply, including any revisions to the  
20 proposed order, no later than January 27, 2011.<sup>2</sup> Counsel for the Walker River Irrigation District  
21 concurs in this suggested approach. The United States will circulate a proposed Stipulation  
22  
23

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24 <sup>1</sup> For example, if there is a determination regarding a form joint motion for substitution, it might also be  
25 helpful to prepare a form motion for use by just a defendant and a form motion for just a successor to use to move  
26 for substitution under circumstances when both parties are unable or unwilling to do a joint motion.

27 <sup>2</sup> Counsel for the United States identified at the status conference on October 19, 2010, that she will be  
28 unavailable for two weeks at the end of December. She will return to the office on January 4, 2011.

1 regarding this additional deadline to the other Plaintiff parties and primary Defendants and will  
2 then file this Stipulation for the Court's approval.

3 Dated: November 30, 2010

Respectfully submitted,

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12 Dated: November 30, 2010

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19  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of November, 2010, I electronically filed the foregoing **SUBMISSION OF PROPOSED ORDER CONCERNING SERVICE ISSUES PERTAINING TO DEFENDANTS WHO HAVE BEEN SERVED and PROPOSED ORDER CONCERNING SERVICE ISSUES PERTAINING TO DEFENDANTS WHO HAVE BEEN SERVED** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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and I further certify that I served or caused to have served a true and correct copy of the  
foregoing **SUBMISSION OF PROPOSED ORDER CONCERNING SERVICE ISSUES**



**PERTAINING TO DEFENDANTS WHO HAVE BEEN SERVED and PROPOSED  
ORDER CONCERNING SERVICE ISSUES PERTAINING TO DEFENDANTS WHO  
HAVE BEEN SERVED** on the following non-CM/ECF participants by U.S Mail, postage  
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